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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

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SUMMARY RECORD OF THE 1119th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 5 March 1997, at 10 a.m.

Chairman: Mr. BANTON

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REPORT OF THE CHAIRMAN

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The meeting was called to order at 10.05 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3) (continued)

1. The CHAIRMAN announced that Uganda had requested the Committee to defer the consideration of its report, but without giving a date. The Committee should seek the opinion of Mr. Ahmadu, Special Rapporteur for Uganda, on the matter; he was currently absent. Mr. Wolfrum was drawing up a draft general recommendation on the rights of indigenous peoples and would submit it at the end of the session or at the next session.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Review of the implementation of the Convention in States parties whose reports are excessively overdue

Afghanistan

2. Mr. WOLFRUM (Country Rapporteur) reminded the Committee that Afghanistan had submitted its initial report until 1984. In 1994, the Committee had deferred consideration of the situation in Afghanistan because of the civil war there. Unfortunately, that situation still obtained and was worsening, as numerous sources such as the United States Department of State and non-governmental organizations, especially Amnesty International, had reported. Mr. Choong-Hyun Paik, Special Rapporteur of the Commission on Human Rights for Afghanistan, had said in February 1996 that the de facto absence of a central government in Afghanistan made preventing human rights abuses extremely difficult.

3. The civil war and security problems were preventing human rights organizations from monitoring the situation in the country properly. Nonetheless, the Afghan League of Human Rights and the Cooperation Centre for Afghanistan produced annual and monthly reports respectively on the human rights situation. In July 1996, the Kabul authorities had permitted three representatives of Amnesty International to visit that city, but not to meet Taliban representatives.

4. Sunni and Shi'ite Muslims comprised respectively 84 per cent and 15 per cent of the population of Afghanistan. With regard to ethnic groups, 38 per cent of the population were Pashtuns, 25 per cent Tajiks, 19 per cent Hazaras and 6 per cent Uzbeks. The main languages spoken in the country were Pashtu (35 per cent), Dari (50 per cent) and Turkish. Afghanistan was therefore a racially diverse country. The political situation had simplified. There remained two major warring groups, the Northern Alliance and the Taliban; the latter controlled about 70 per cent of the country, including Kabul. While Mr. Norbert Holl, the United Nations Special Envoy, had been unable to secure a cease-fire agreement, he had made progress towards getting the factions to begin political talks. Other groups of note were the Jamiat-e Islami (Society of Islam), the alliance lead by President Rabbani, and General Abdul Rashid Dostum's Junbesh-e Melli Islami (National Islamic Movement). Other armed groups opposed to the Taliban had formed a new alliance, the Defence Council.

5. The Taliban were a Pashtun-dominated ultra-conservative Islamic movement. They recognized only the validity of Islamic law and did not accept either secular law or binding international human rights norms. The very strict rules that they imposed in their territory had less to do with Islam than with the moral principles prevalent in Pashtun communities.

6. According to Amnesty International, the Taliban had detained some 1,000 civilians in the aftermath of their attack on Kabul. Those prisoners' families feared that their relatives had been sent to clear mines in the Panjshir Valley. Amnesty International had also reported that the Taliban had detained people because of their ethnic origin.

7. The Taliban had set up Islamic courts in areas under their control to hear criminal cases and resolve disputes.

8. In his report of October 1996, the United Nations Special Rapporteur on the situation of human rights in Afghanistan had said that the Shia Unity Party (Hezb-i-Wahdat) in Bamian province had established a judicial committee to deal with political, military and social offences. There were also courts of first and final instance.

9. According to UNHCR, there were still some 18,800 refugees from Tajikistan in Afghanistan and about 1,000 Tajik refugees had been repatriated in 1996. Tajiks living in the Saki camp run by UNHCR had been able to repatriate. Refugees in camps in the Kunduz area, which was controlled by the Defence Council and independent warlords and where the Tajiks actively opposed repatriation, did not have access to repatriation information, nor did UNHCR have access to the camps. UNHCR reported, however, that the opposition's hold on the camps was decreasing.

10. Certain ethnic groups seemed to be the particular targets of ill-treatment by the Taliban. They included Shiites and members of non-Pashtun ethnic minorities. In early September 1995, following the capture of Nimruz province, Taliban had ordered Shiite residents to leave their homes within three days. Those who had refused had been beaten or threatened with death.

11. The Northern Alliance was led by the former communist general, Abdul Rashid Dostum, an ethnic Uzbek allied with a pro-Iranian Shia militia. Little was known about the administration of justice in the zones controlled by the Northern Alliance. Clearly, the situation in Afghanistan was worse than ever and the Committee could not do much about it. He recommended that the Committee should keep a close watch on the situation, but without taking measures that might duplicate action by other United Nations organs. The Committee should revert to the matter in two years' time.

12. Mr. SHERIFIS expressed support for Mr. Wolfrum's recommendation, but suggested that the Committee should review the situation in Afghanistan in six months' time.

13. Mr. ABOUL-NASR suggested that the Afghan Mission in Geneva or New York should be informed of the Committee's intention to continue monitoring the situation in Afghanistan and that, when the Committee resumed its review, the Afghan Government should be invited to send a delegation.

14. He observed that the Taliban comprised both Shiites and Sunnis; they were not an ethnic group, but an extremist religious group. The conflict in Afghanistan was thus a matter of religion, as were conflicts elsewhere in the world. Account should also be taken of the influence of other countries, especially Turkey and Pakistan, on the situation in Afghanistan. It should also be noted that Afghanistan contained training camps for terrorists from countries including Algeria and Egypt and that in the past the CIA had been involved in their activities.

15. The CHAIRMAN proposed that the Committee should contact the Afghan Mission in Geneva or New York. It could notify the Afghan Government of its profound concern at the situation in the country and resume consideration of that situation when circumstances permitted. Consequently, no firm date should be set for that resumption.

16. It was so decided.

17. Mr. de GOUTTES suggested that it should be emphasised that the Islamic courts established by the Taliban handed down degrading or cruel punishments. Were those courts courts of special jurisdiction or could they be assimilated to traditional Islamic courts? What powers did they have? Could they try anybody, even non-Muslims? It was vital to ask the Government those questions.

18. Mr. RECHETOV stressed that the situation in Afghanistan was ominous and explosive. It could set a quarter of the planet ablaze. Investigation of the human rights situation in Afghanistan was long overdue. As things stood, the country's borders were totally uncontrolled and armed men were flooding across them. There was even a risk of a third world war. The situation constituted a real threat to civilization. He stressed that, even though it now seemed to have distanced itself from them, the Taliban were supported by a great Power.

19. Mr. GARVALOV agreed that the Taliban were not organized on an ethnic basis.

20. Mr. ABOUL-NASR subscribed to Mr. Rechetov's view that the Taliban enjoyed foreign support. He differed with Mr. de Gouttes concerning Islamic courts: such courts were not reprehensible in themselves and they existed in countries besides Afghanistan. The issue was what measures those courts applied and whether they served the interests of some minorities to the detriment of others. To make a general statement on Islamic courts would, in his view, be inappropriate.

21. Mr. RECHETOV remarked that, in situations of instability, such as in Chechnya, the introduction of Islamic law and courts could help to restore order.

22. The CHAIRMAN said that Mr. Wolfrum would prepare a draft recommendation concerning the situation in Afghanistan that took account of the comments made in the Committee.

Bahamas

23. Mr. LECHUGA HEVIA (Country Rapporteur) said that the Bahamas had not submitted any report since its third periodic report (CERD/C/88/Add.2), which dated from 1982. In that document, the country said that the former "institutionalized" racism had disappeared and that the population was firmly opposed to racial discrimination in whatever form. The Government had expressed the view that the Constitution guaranteed the implementation of the Convention and that there was therefore no need to enact further legislative or administrative measures to that end. It had also said that it did not intend to amend the Constitution, even though the definition of racial discrimination in it was narrower than that in the Convention. No legislation had been enacted to provide for redress before the courts in connection with the provisions of the Convention. The Constitution guaranteed everyone, whatever their race or origin, the exercise of the fundamental rights and freedoms.

24. The Committee had asked for more information about education on racial measures and about measures on behalf of the most disadvantaged members of the population. It had also requested more information concerning the implementation of article 7 of the Convention in the fields of teaching, culture and information. In response to the numerous inquiries it had made since 1984, the Committee had been told that a report would be submitted in November 1996; it had yet to arrive. He felt that the Bahamian Government should again be offered technical assistance from the Centre for Human Rights in drafting that report.

25. The proposal to submit a report in November 1996 had emanated from the Permanent Mission of the Bahamas in New York.

26. The CHAIRMAN suggested that, in drafting the Committee's conclusions, the Special Rapporteur should draw on the comments concerning countries in the same situation as the Bahamas that were to be found in the Committee's latest report to the General Assembly (A/51/18, paras. 427-459).

Dominican Republic

27. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) reminded the Committee that the Dominican Republic had, in 1988, submitted its initial report and its first to third periodic reports in a single document (CERD/C/165/Add.1). It had stated in that regard that racial discrimination was prohibited by article 100 of the Constitution and was non-existent in the country. The Dominican population comprised Blacks, Indians, Whites and a large proportion of people of mixed race. The country had never replied to the questions the Committee had asked when it had examined the reports in 1990 (A/45/18, paras. 230-235). How did it treat the mainly Haitian Blacks who were legally

or illegally employed in the sugar cane plantations (para. 232)? How were pupils from the various ethnic groups treated in educational establishments? How did the overall socio-economic situation of Blacks and Indians compare with that of Whites, who apparently constituted 20 per cent of the population?

28. Additional information was needed concerning articles 5, 6 and 7 of the Convention.

29. All States parties to the Convention had undertaken to take legislative measures pursuant to article 4, whatever their domestic law. He trusted that the Dominican Republic would submit a new, detailed report to the Committee and offered the technical assistance of the Centre for Human Rights to that end.

REPORT OF THE CHAIRMAN (agenda item 2)

30. The CHAIRMAN said, with regard to paragraph 1 of his report (document without a symbol, in English only), that he believed a draft resolution was being prepared concerning the recommendation made at the seventh meeting of persons chairing human rights treaty bodies (A/51/488, para. 29). Accordingly, he proposed that consideration of the matter should be postponed, subject to its resumption at the earliest possible moment under the procedure for rapid inclusion of an item in the Committee's agenda.

31. It was so decided.

32. With the support of Mr. Diaconu, he proposed that consideration of the recommendation to incorporate a gender perspective into the reporting guidelines (report of the Chairman, para. 2) should be postponed to the Committee's fifty-first session, when the final document of the round-table on women's health to which the chairpersons of the treaty bodies had been invited would be available.

33. It was so decided.

34. Replying to Mr. Aboul-Nasr, he said that the question of the Committee's representation at the round-table had been discussed at the forty-ninth session, but lack of time had prevented the making of a recommendation (report of the Chairman, para. 4).

35. He invited the members of the Committee to comment on the suggestion that treaty bodies might ask the Sub-Commission on Prevention of Discrimination and Protection of Minorities to commission studies on topics of interest to them (report of the Chairman, para. 3).

36. Replying to requests for clarification from Mr. Sherifis, Mr. van BOVEN said that it had been thought wise that the Sub-Commission should undertake studies potentially of use to other United Nations bodies. It had therefore been suggested that those bodies should propose to the Sub-Commission the making of studies on subjects of particular interest to them, such as, in the case of the Committee, affirmative action.

37. Mr. SHERIFIS asked, with regard to paragraph 3 of the Chairman's report, whether the Committee was competent to commission studies and whether its members could participate in studies of relevance to its work. In his view, worldwide studies on various aspects of the refugee situation would be extremely useful to the Committee.

38. Mr. ABOUL-NASR said no report was needed on the return of refugees' property, since the relevant right was now duly recognized. Similarly, since refugees' rights to return and compensation were firmly established, no fresh studies were required.

39. The CHAIRMAN remarked that the question of making studies had initially been raised by a member of the Committee. In his view, it might be possible to make studies, but the requisite funds were not available.

40. Mr. YUTZIS said that, in view of the Committee's role of assessment, new, targeted studies in the Committee's field of work would be useful not only to it, but also to other bodies. They would require relatively modest sums that were undoubtedly available. They should, however, be the subject of consensus among the members of the Committee and their scope should be carefully defined.

41. Mr. DIACONU explained that, unlike the Sub-Commission, the Committee was not competent to make studies or to undertake initiatives entailing expenditure. It could, however, request the Sub-Commission to draw up documents of use to it. Insofar as such matters were relevant to the Committee's mandate, the documents might concern, inter alia, palliative action, the rights of non-citizens or refugees. Perhaps the members of the Committee could raise the matter at the next meeting of chairpersons; the latter could then make a recommendation to the Sub-Commission.

42. Mr. GARVALOV expressed support for the idea of commissioning studies, providing they were not merely informative, but also had a specific purpose. Studies might, for example, be undertaken on the possible use of early warning procedures for the submission to United Nations decision-making bodies of the views and suggestions of treaty bodies, such as the Committee, on matters within their purview.

43. He also thought that the Committee should look at the information and proposals of relevance to its own work that had emerged from international activities such as the seminar on racial discrimination held at Geneva in September 1996. Under a joint decision of the Committee and the Sub-Commission, he and Mrs. Sadiq Ali were contributing to the drafting of a joint working paper from the two bodies on article 7 of the Convention. An advance version would be submitted to the Committee in the near future.

44. Mr. WOLFRUM drew the Committee's attention to the question of the non-implementation of international human rights instruments by newly emergent States. Many new States were very slow in submitting their periodic reports or failed to take measures to protect their citizens' fundamental rights. New

States ignored the principle that the dissolution of a State should not terminate the application of international human rights instruments. Studies on the policy of such States could be of use in providing the Committee with a basis for taking a stand on the matter and devising appropriate measures.

45. Mr. FERRERO COSTA said that studies were desirable on many questions, including the reservations entered by some States parties to the Convention. That was particularly true with regard to recent adherents to the Convention, especially the United States of America, which had entered reservations that were as numerous as they were questionable, to the point of challenging the validity of certain articles. Acceptance of those reservations would leave the Convention void of substance vis-à-vis certain States and would prevent its universal application. The Committee should study in depth the question of the validity of all aspects of the human rights instruments vis-à-vis all States parties, with a view to appropriate action.

46. The CHAIRMAN advised Mr. Ferrero Costa that he could find answers to his concerns in two reports by the International Commission of Jurists on reservations.

47. Mr. de GOUTTES said that he viewed as being of the utmost importance the fact that some researchers were again pondering the definition of racism and pointing out that international instruments, including the Convention, defined racial discrimination but not the concept of race. To their mind, that concept was scientifically wrong and should therefore be abolished. According to that school of thought, which had representatives within the United Nations, texts containing the term "race" should be amended. While that was still a minority view, it was gaining ground and should be of concern, above all to the Committee, which should look into the issue and take a stand on it.

48. Mr. GARVALOV said that the problem alluded to by Mr. de Gouttes was indeed important. The school of thought in question was supported by a European State that was not a party to the Convention.

49. Mr. YUTZIS said he had been struck by the fact that States parties' behaviour vis-à-vis the Committee was influenced by a certain theoretical confusion concerning racial discrimination. Many States asserted in their periodic reports that they were free from racial discrimination and then held to that assertion in the face of the incredulity of members of the Committee. The Committee should at least try to clarify the matter. Clarification was also required with regard to article 4 in order to supplement the explanations that the Committee, when considering periodic reports, had constantly to repeat to representatives of States which established rankings for the fundamental rights. In view of the media's considerable and dominant influence on social and racial relations in modern societies, clarification was also necessary with regard to the provisions of article 7 concerning freedom of the press.

50. Mr. RECHETOV, referring to the reservations entered by States such as the United States of America, France and the United Kingdom to important provisions of the Convention, said that the primacy of the Convention should

be firmly asserted and recognized. He favoured the taking of the decisions that derived from that principle against States parties that unduly entered reservations and against parties, such as the new Baltic States, that were too slow to give practical effect to their obligations under the Convention. He therefore warmly supported Mr. Wolfrum's proposal.

51. The CHAIRMAN said that Mr. Rechetov's first point and the proposals made by Mr. de Gouttes and Mr. Yutzis could be examined under agenda item 10, "Third Decade to Combat Racism and Racial Discrimination". They could also be the subject of studies when the Sub-Commission so decided. He drew Mr. Yutzis' attention to the relevant section of General Assembly resolution A/51/617 concerning the Third Decade, particularly paragraph 10 concerning the use of the Internet for the dissemination of racist propaganda.

52. Regarding studies on States parties' reservations, he suggested that the Committee's secretariat should draft for the secretariat of the Sub-Commission a note listing the questions on which the Committee would like studies to be made. Members of the Committee who wished to have studies made might also consider submitting requests to that effect to bodies other than the Sub-Commission.

53. Mr. DIACONU said that, when participating in the round-table on women's health, he had tried to describe the Committee's activities by emphasizing the specificity of its approach and of the Convention and by explaining that the Committee only dealt with questions of discrimination against women when they also involved an element of racial or ethnic discrimination. That position had not, however, been understood and the Committee had been urged to take into account the problem of discrimination on grounds of sex. In his view, it was very important for the Committee to defend its own identity if it was not to founder in the ocean of human rights.

54. Mr. ABOUL-NASR asked by whom and how decisions were reached on the representation of the Committee in the workshops, symposiums and other meetings it was invited to attend. Unlike their European and Latin American counterparts - the latter of whom could, in fact, be considered as being, culturally speaking, Europeans - the members who came from Africa or Asia, areas under-represented in the Committee, contrary to article 8 of the Convention, were very seldom asked to take part in such events on the Committee's behalf. That was despite the fact that they came from continents containing a huge proportion of humanity and represented different cultures and legal systems that had to be taken into account. The comment made by Mr. de Gouttes concerning Islamic courts, for example, attested a lack of understanding of the legal system of Muslim countries. The fact that the Committee preferred to deal with questions such as sexual inequality rather than the disastrous consequences for Iraqi children of the sanctions imposed on their country was further evidence of the imbalance.

55. The CHAIRMAN recognized that there was a problem regarding representation of the Committee. He would say later by whom and how the decisions concerning invitations were taken. With respect to the round-table in question, he himself had attended in his capacity as Chairman. The Committee had also nominated Mr. Valencia Rodriguez, who, in the event, had been unable to go and had been replaced by Mr. Diaconu.

56. Mr. WOLFRUM said he firmly believed that the variety that existed within the Committee with regard not only to its members' regional origins, but also to their professional backgrounds and the cultural and legal systems they represented, was one of its greatest assets and should also be reflected in the choice of the Committee's representatives. Concerning questions of discrimination against women, he entirely agreed with Mr. Diaconu that they did not come within the Committee's mandate. That, of course, did not prevent the Committee from examining cases of individual discrimination against women on ethnic grounds, nor did it need any encouragement to do so.

57. Mr. de GOUTTES said he, too, was convinced that pluralism was an essential feature of the Committee. Concerning Islamic courts, he wished to clear up a misunderstanding: he had had no intention of questioning the principle of those institutions, for which he had the greatest respect. He merely wondered whether the Taliban did not use Islamic courts for extremist purposes.

58. Mr. FERRERO COSTA subscribed wholeheartedly to the remarks made by Mr. Aboul-Nasr. All the members of the Committee should be equally able to represent it and the current practice, which was certainly less the outcome of any ill intent than of practical considerations, should be changed. The Committee should take up questions relevant to women and questions relevant to children or persons with disabilities only when they also involved racial discrimination.

59. Mr. van BOVEN remarked that the position prevailing in the Committee on the consideration of questions of sexual inequality was perhaps attributable to the fact that the Committee comprises 16 men and only 2 women. The fact that there was a convention on the elimination of discrimination against women should not preclude the Committee from examining all cases of racial discrimination that particularly affected women, for women could fall victims to discrimination both because of their race and because of their sex. The Committee must not overlook that.

60. Mr. RECHETOV said that Mr. Aboul-Nasr had raised a very important question having to do with the West's long-standing ideological, cultural and political hegemony. The members of the Committee were all absolutely equal and equally competent. It was within its own ranks that the Committee must first seek to root out racial discrimination. The end of paragraph 12 of the report of the Chairman should be reworded: it put the members of the Committee who were ambassadors in a distinct category, as if their time were limited and academics were completely free to work for the Committee between sessions. He proposed that a list should be made of all the seminars, international conferences, round-tables and the like, other than the missions incumbent on the Chairman, in which the Committee was invited to participate and that those prestige assignments should be shared out as fairly as possible between all the members.

61. Mr. GARVALOV supported the comments made by Mr. Aboul-Nasr. Although he himself had been born in a European country, that country's geographical location, political history and economy were such that he was not really considered a European. Even his diplomatic passport did not guarantee him access to all west European countries.

62. The CHAIRMAN, continuing the introduction of his report, said that paragraph 6 was informative and that, pursuant to paragraph 7, the Bureau would, if there were no objection, send out suitable replies to letters received by the Committee.

63. The report of the Chairman was adopted.

64. The CHAIRMAN announced that the Committee had completed the consideration of item 2 of its agenda.

The meeting rose at 1 p.m.